IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7948 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHANSING HARDEVSING KHALSA

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

MR.UDAY BHATT, Ld. APP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution ofIndia, challenged the legality and validity of an order of detention dated 01/07/2000 (Annexure - A) passed by

respondent No.2 with respect to detenu - petitioner in exercise of his powers conferred upon him under section 3(2) of the Gujarat Prevention of antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention, the petitioner-detenue is "a bootlegger" within the meaning of section 2(b) of the Act, and tht activities of the petitioner are prejudicial to the maintenance of the public order.

3. Before passing an order of detention, for arriving at a subjective satisfaction, the detaining authority has placed reliance on one prohibition case lodged in Prohibition Station, Northen Region of Ahmedabad City on 29th June, 2000. The detaining authority has also placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. As per the papers, these two statements were verified by the detaining authority on 30th June, 2000 and on the very next day, the detaining authority has passed an order of detention on 01/07/2000 against the detenu which is challenged in this writ petition.

4. Though rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Mr.H. R. Prajapati, learned advocate for the petitioner has argued that looking to respective dates of statements, date of verification and date of order of detention, it is crystal clear that the detaining authority has wrongly claimed the privilege under section 9(2) of the Act. As per the arguments of Mr.H. R. Prajapati, learned advocate for the petitioner the case was lodged against the detenu on 29/06/2000. The statements of two witnesses were recorded on 30/06/2000 and on the very next day i.e. on 01/07/2000 the detaining authority has passed an order of detention. These respective dates show that the claim is not genuine. Mr.Prajapati, learned advocate for the petitioner has cited an authority of KALIDAS CHANDUBHAI KAHAR V/s. STATE OF GUJARAT AND OTHERS, reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of the Act. Thus, when the privilege is not genuine mandate given in

Article 22 of the Constitution of India is violated and, therefore, the order of detention which is challenged in this writ petition is bad in law and it requires to be set aside.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 01/07/2000 passed by respondent no.2 with respect to detenu isquashed and set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

( H. H. Mehta,J.)
(vrpanchal)*